THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.5092 OF 1997

Date: March 22, 2007

Between:
Masna, son of Vallaji,
aged 46 years, Occ: Booking Clerk E.80023,
R/o H.No.6-12-52, Namdevwada, Nizamabad.

…. Petitioner

And

1. The Managing Director, APSRTC,
   Mushirabad, Hyderabad-20
   and 3 others.

…. Respondents.

* * *

ORDER:

This writ petition is filed seeking Mandamus declaring action of the respondents in passing the proceedings No.E2/255(1)/97-RM: NZB, dated 27.02.1997 promoting the 4th respondent to the post of Assistant Depot Clerk/Controller, ignoring seniority of the petitioner, as illegal, arbitrary, unjust and violative of Articles 14, 16 and 21 of the Constitution of India.

2. There is no necessity of going into all the details. It is suffice to notice that the petitioner was a displaced employee and he was appointed as a Booking Clerk in the APSRTC due to nationalisation of routes in Nizamabad District. According to the petitioner he was a Checker i.e., Inspector checking the buses of the private operator and he was absorbed in the RTC as a Booking Clerk. According to the Circular No.E5/46/59, dated 01.4.1961, he is entitled to count his services rendered in the post of Checker with the private operator for the purpose of seniority in the cadre of Booking Clerk in APSRTC. It is

his case that according to the said circular the services rendered by an employee in higher category with the private operator will get the benefit of such services in the lower post in which he is absorbed in the service of the corporation. Thus, ignoring the seniority of the petitioner the 4th respondent was promoted under the impugned proceedings as Assistant Depot Clerk/Controller, which is arbitrary and illegal.

3. A detailed counter-affidavit has been filed denying the allegations made by the petitioner. It is categorically asserted in the counter that the said circular dated 01.4.1961 in Reference No.E5/46/59 was never given effect to.

4. Learned counsel for the petitioner stated that the decision rendered by the Labour Court is binding on the respondents. Therefore, they are supposed to implement the same. A bare look of the operative portion of the Award passed by the Labour Court in I.D.No.92 of 1994 dated 09th September 1996 reveals as under.

> Hence the reference is awarded as follows:-
>
> The Regional Secretary APSRTC Employees Union, Nizamabad is not justified in demanding the promotion of Sri Masna, Booking Clerk as Ticket Checking Inspector and also he is not eligible to draw the differential allowances between booking clerk post and Conductor post, but however WW.1 deposed that Ex.W7 is the copy of the Circular, it is not clear from the evidence as to whether the petitioner has been given benefit of his service which he has put in in the higher cadre as checking officer in the private transport, at the time of appointing him as booking clerk in the corporation as per Ex.W7 which reads " while preparing the seniority list it should be kept in view that an employee who has rendered services in a higher category with the private operator will get the benefit of such services in the lower post in which he is absorbed in the service of the corporation." No doubt this is not a direct issue in the reference but however it is taken as a issue incidental to

> the dispute in reference and in order to save further references, the management is directed to give compliance to Ex.W7 Circular dated 1.4.1961 of the office of the Chief Executive Officer, Musheerabad, Hyderabad in the post of Booking Clerk if already such a benefit is not given."

From the above it is further clear that this question directly was not in issue in the reference. The issue that was referred for adjudication of the Labour Court is as hereunder.

> "Whether the Regional Secretary, APSRTC Employees Union, Nizamabad is justified in demanding the promotion of Sri Masna, Booking Clerk as Ticket Checking Inspector and also eligible to draw the differential allowances between Booking Clerk post and Conductor post?"

5. May be the Award of the Labour Court attained finality, but in view of the fact that the said circular was not given effect to, no relief as sought for in the writ petition can be granted. The writ petition is devoid of merits and liable to be dismissed.

6. Accordingly, the writ petition is dismissed. No costs.

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(C.V.RAMULU, J.)

Date: March 22, 2007.
BSB